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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,383	01/17/2002	Michael T. Merk	24637-5	3156
21130	7590	07/21/2004	EXAMINER	
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 2300 BP TOWER 200 PUBLIC SQUARE CLEVELAND, OH 44114			PHAN, THANH S	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/053,383	Applicant(s) MERK ET AL.	
	Examiner Thanh S Phan	Art Unit 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/24/04, 01/17/02</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bar-Yona [US 6,226,906] in view of Chang [US Des. 421,722].

Bar-Yona discloses a display unit [figures 8-9] comprising: a housing [4] having a top portion and a base portion, wherein the top portion housed an lenticular lenses image display unit [8, 10] displaying at least two changeable images; an information display [clock 62; the clock could be digital column 4, lines 35-36].

Bar-Yona discloses the claimed invention except for the base of the apparatus being a shaped base portion having a length less than a height of the apparatus; where the shaped base portion supports the image and the information display in a substantially vertical orientation.

Chang discloses a rocking clock [figure 1] comprising a round base portion and a top portion; wherein the base portion having a length less than the height of the top portion; and wherein the top portion housed information display mechanisms.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the rocking clock design of Chang with Bar-Yona for the purpose of providing rocking motion.

Claims 6-7 and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bar-Yona, as modified, as applied to claim 1 above, and further in view of Herron [US 4,912,586].

Regarding claims 6-7 and 9-12 and 15, Bar-Yona, as modified, disclose the claimed invention except for the weight distribution upon the top portion or the base portion.

Herron discloses a self-righting timepiece including a counterweight [34] in a base portion thereof [figure 3].

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the particular mounting of the counterweight of Bar-Yona, as modified, as suggested by Herron and acknowledged in applicant's arguments, page 6, paragraph 2, could be changed in order to provide a particular bias to the clock/display apparatus.

Regarding claims 13-14, Bar-Yona, as modified, disclose the instant claimed invention except for the base weight being a power supply.

Bar-Yona discloses the power supply mounted in the base of the device [figure 5].

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the power supply would also constitute a portion of the weight on the bottom.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bar-Yona and Chang as applied to claim 7 above, and further in view of Kutosky [US 5,995,455].

Bar-Yona and Chang disclose the claimed invention except for the clock is one of an alarm settable to sound at a determined time and immediately upon user interaction.

Kutosky discloses an alarm timer device [figure 3] comprising alarm on/off switch [80].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to use the alarming design of Kutosky with Bar-Yona, as modified, for the purpose of facilitating alarm at a preset time.

### ***Response to Arguments***

Applicant's arguments filed 03-24-04 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21

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USPQ2d 1941 (Fed. Cir. 1992). In this case, Both Bar-Yona and Chang disclose time pieces supported on a base. A skilled artisan would have been motivated to seek clock/display mounting techniques in similar types of devices.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh S Phan whose telephone number is 703-305-0069. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David S Martin can be reached on 703-308-3121. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7721.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

tsp

  
**TULSIDAS PATEL**  
**PRIMARY EXAMINER**